August 30, 2005

#### VIA ELECTRONIC COMMENT FILING SYSTEM

Marlene H. Dortch, Secretary Federal Communications Commission 445 Twelfth Street S.W. Washington, D.C. 20554

Re: WC Docket 05-196 - VoIP E911 Subscriber Notification Report

Dear Ms. Dortch:

airBand Communications, Inc. ("airBand") is filing this initial Subscriber Notification Report to provide the information called for by the Commission's Public Notice entitled Enforcement Bureau Provides Guidance to Interconnected Voice Over Internet Protocol Service Providers Concerning the July 29, 2005 Subscriber Notification Deadlines.<sup>1</sup>

#### Background

airBand is a broadband communications service provider that offers, among other services, interconnected Voice over Internet Protocol ("VoIP") telephone service primarily to business customers. Approximately 30% of the airBand customers have acquired an integrated access device ("IAD") which connects to the customer's PBX and converts voice signals into data packets. Because of the integrated hardware that is involved in the IAD service, the VoIP phones of these IAD subscribers are located at permanent fixed locations. As a consequence, the subscribers in this category do not present the same challenges with regard to E911 location specification as do other VoIP customers. The remainder of the airBand customers utilize a more portable desktop VoIP solution that does enable subscribers to make and receive interconnected calls at multiple locations.

#### Report in Response to the July 26 Guidance

airBand responds to the questions set forth in the July 26 Guidance as follows:

 A detailed description of all actions the provider has taken to specifically advise every subscriber prominently and in plain language, of the circumstances under which

<sup>&</sup>lt;sup>1</sup> See DA 05-2085, released July 26, 2005 (the "July 26 Guidelines"). Pursuant to the July 26 Guidelines this initial report was due to be filed on August 10, 2005. The circumstances that led to the delay in filing are set forth in detail in the final section at the end of this letter. airBand respectfully requests that the Commission refrain from any enforcement action as a result of the untimely initial submission because the delay was inadvertent and the company is taking extra measures to come into full compliance with the Commission's current VoIP B911 policy before the extended enforcement deadline of September 28, 2005 and to comply with the additional rules which take effect on November 28, 2005.

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E911 service may not be available through the interconnected VoIP service and/or may be in some way limited by comparison to traditional E911 service. This information should include, but is not limited to, relevant dates and methods of contact with subscribers.

Prior to the adoption by the Commission of its First Report and Order and Notice of Proposed Rulemaking (the "VoIP E911 Order") on June 3, 2005, airBand was sensitive to the fact that its customers were not able to enjoy the same level of E911 service available on traditional wireline networks. As a result, as a standard procedure in connection with the initiation of service, new customers of airBand were asked to sign a form entitled "Limitation of Liability and Indemnification for Emergency 911 Service". It is the policy of airBand not to begin provisioning service until this waiver form was signed. A copy of the form is included as <a href="https://doi.org/10.1001/journal.or

Following the release of the July 26 Guidance, airBand has taken the following additional steps to advise every subscriber regarding the limitations on the availability of E911 service:

On August 30, 2005, airBand sent every airBand VoIP customer an e-mail specifically pertaining to the E911 issue. The e-mail was drafted with the assistance of federal regulatory counsel in order to provide all of the information required by the July 26 Guidance. Specifically, the e-mail explained the circumstances under which E911 service may not be available through their interconnected VoIP service and how E911 service may be limited in comparison to traditional E911 service. A sample copy of the e-mail advisory is included as <a href="Attachment 2">Attachment 2</a>. The advisory provided customers with a link to the airBand website which contained a form for the subscriber to fill out to acknowledge receipt and understanding of the VoIP E911 advisory. The acknowledgement form is attached hereto as <a href="Attachment 3">Attachment 3</a>.

In addition, airBand has modified its customer initiation procedures in order to assure that all new customers receive full and complete information regarding the nature and extent of the limitations on the availability of E911 service from VoIP equipment. New customers must initial a paragraph on the new customer contract containing the following acknowledgements:

I am in receipt of the airBand advisory regarding the circumstances under which E911 services may not be available through the interconnected VoIP service I receive and the limitations of the E911 services that are available. I also am in receipt of the warning labels airBand provided for me to place on or near my VoIP equipment.

Delias Office
14180 Delias Parkway, Suhe 400
Delias, Texas 75254
Phone (469) 791-0000
WDC/317329fdx (469) 374-0741

Houston Office 6699 Portwest, Suits 150 Houston, Texas 77024 Phone (713) 426-2406 Fax (713) 863-9221 Phoenix Office 4050 East Cotton Canter Boulevard, Suite 67 Phoenix, Arizona B5040 Phone (602) 426-0600 Fax (602) 426-0700

<sup>&</sup>lt;sup>2</sup> See IP-Enabled Services and E911 Requirements for IP-Enabled Service Providers, 2005 WL 1323217, (Wt Docket No. 04-36; WC Docket No. 05-196), released June 3, 2005.

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2. A quantification of how many of the provider's subscribers, on a percentage basis, have submitted an affirmative acknowledgement, as of the date of the report, and an estimation of the percentage of subscribers from whom they do not expect to receive an acknowledgment by August 29, 2005.

Because airBand transmitted the advisory to its VoIP subscribers essentially contemporaneously with the filing of this initial E911 Report, its subscribers have not had an opportunity to review the e-mail and submit an affirmative acknowledgement as of the date of this Subscriber Notification Report. In order to compensate for the delayed notification, airBand intends to implement special follow-up procedures including telephone contacts, and even in-person visits if necessary, in order to secure customer responses. As required by the recent Public Notice entitled Enforcement Bureau Provides Further Guidance to Interconnected Voice Over Internet Protocol Service providers Concerning Enforcement of Subscriber Acknowledgement Requirement, airBand shall file further reports on September 1, 2005 and September 22, 2005 providing additional information regarding the status of the customer acknowledgements.

3. A detailed description of whether and how the provider has distributed to all subscribers warning stickers or other appropriate labels warning subscribers if E911 service may be limited or not available and instructing the subscriber to place them on and/or near the customer premises equipment used in connection with the interconnected VoIP service. This information should include, but is not limited to, relevant dates and methods of contact with subscribers.

The e-mail sent by airBand to its customers included a sample of the warning labels that were intended to be placed on or near VoIP handsets and associated equipment. The warning labels were formatted in order to be easily printed on Avery No. 5661 blank label sheets, and customers were notified of this fact. A copy of the sample warning labels is attached as Attachment 4.

In addition to providing the sample warning label by e-mail, airBand is printing sets of warning labels on stickers and is sending them by mail to each airBand customer. In circumstances where customers are known to have multiple handsets in service using the airBand VoIP service, multiple sets of stickers are being sent in order to facilitate the posting process for the customers.

4. A quantification of how many subscribers, on a percentage basis, to whom the provider did not send the advisory described in [No. 1] above, and/or to whom the provider did not send warning stickers or other appropriate label as identified in [No. 3] immediately above.

As of today airBand has sent the advisory described in the first question above to 100% of its subscribers and also has sent the warning labels by email to 100% of its subscribers. In addition, airBand anticipates that it will have sent warning stickers to 100% of its subscribers by U.S. mail no later than Friday, September 2

<sup>&</sup>lt;sup>3</sup> See DA 05-2358 released August 26, 2005 (the "August 26 Guidance").

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5. A detailed description of any and all actions the provider plans on taking towards any of its subscribers that do not affirmatively acknowledge having received and understood the advisory, including, but not limited to, disconnecting the subscriber's VoIP service with the Company.

The aforementioned e-mail notification sent by airBand informed its customers that a prompt response was required and that failure to respond on or before September 28, 2005 could result in a disruption of service.

Obviously, airBand is hoping to receive the requisite acknowledgements from all customers on a timely basis in order to avoid having to disconnect a non-responsive subscriber's VoIP service. As earlier noted, airBand plans to send additional reminder e-mails, contact non-responsive subscribers via telephone, and send airBand representatives to subscriber premises if necessary to ensure that its subscribers understand the advisory and provide affirmative acknowledgement.

6. A detailed description of how the provider is currently maintaining any acknowledgements received from it subscribers.

The airBand website has been configured to capture automatically all acknowledgments submitted online in response to the e-mail notification sent to the airBand subscribers. In addition, airBand has established procedures to maintain on file all written acknowledgements received from its subscribers either in response to the recent notification or secured in connection with new customer service initiations.

7. The name, title, address, phone number, and e-mail address of the person(s) responsible for the Company's compliance efforts with the VoIP E911 Order.

The following person has been designated by airBand as its E911 compliance contact:

Tammy Miles
Executive Director, Provisioning and Customer Support
airBand Communications
14180 North Dallas Parkway
Suite 400
Dallas, TX 75254

Phone: (469) 791-0280 Fax: (469) 791-9193

E-mail: tmiles@airband.com

#### Request for Delay of Enforcement Action

The July 26 Guidance and the August 26 Guidance indicate that the Enforcement Bureau (the "Bureau") intends to refrain from enforcing the E911 advisory requirement, the affirmative

Dallins Office 14180 Dallas Parlovay, Suite 400 Dallas, Texas 7.5254 Phone (469) 791-0000 Fax (469) 374-0741 Heusten Office 6699 Portwest, Suite 150 Houston, Texas 77024 Phore (713) 426-2406 Fox (713) 863-922)

Phoemix Office 4050 East Cotton Center Baulevard, Suite 67 Phoenix, Arizana 85040 Phone (602) 426-0600 Faxt (602) 426-0700 Marlene H. Dortch, Secretary

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acknowledgement requirement and the sticker requirement with respect to all VoIP providers who timely filed their initial compliance report on or before August 10, 2005. airBand respectfully requests, for the reasons set forth below, that the Bureau likewise refrain from enforcement action against airBand even though this initial report is being filed beyond the August 10 date.

Because the airBand VoIP services previously were largely unregulated at the federal level, the company had not engaged federal regulatory counsel. As a consequence, airBand was not advised when either the VoIP E991 Order or the July 26 Guidance were released. As a result, the August 10 reporting date passed without airBand being aware of the filing requirement. airBand now has addressed this situation by engaging federal regulatory counsel to advise the company with respect to E911 developments affecting VoIP service providers, and related compliance issues.

While airBand had a general understanding of the E911 issue that was facing the VoIP industry, it was under the mistaken impression that, because it was not a facility-based service provider and because all of its customers had signed E911 waivers, that airBand was not required to comply with the FCC's E911 requirements. airBand now understands and appreciates its responsibilities with respect to E911 services, and has taken corrective actions to comply with the advisory requirement, the affirmative acknowledgement requirement and the sticker requirement.

As indicated above, airBand intends to initiate special follow-up measures with its customers in the hope that its level of compliance by the new extended enforcement deadline will quickly be on a par with other VoIP carriers and satisfy the Commission's requirements.

In sum, based upon the inadvertent nature of the failure to file on August 10, the relatively brief delay after August 10 before this initial report was voluntarily filed by airBand on its own motion, and the concrete steps that airBand has taken to bring itself into compliance with the new rules within the extended enforcement deadline, airBand respectfully requests that the Bureau refrain from taking enforcement action against airBand at this time.

Sincerely.

Jim Timmer

Chief Financial Officer

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# LIMITATION OF LIABILITY AND INDEMNIFICATION FOR EMERGENCY 911 SERVICE

airBand ("airBand") will provide \_\_\_\_\_ ("Customer") with airBand bundled services (the "Service") for purposes of terminating local calls over airBand's facilities in airBand's point of presence ("POP").

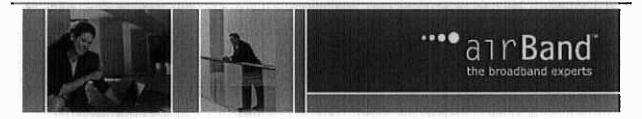
airBand shall have no responsibility or liability to the Customer or any third party in connection with or for responding to emergency 911 or other emergency referral calls. Customer agrees to provide airBand detailed information related to multi-location private branch exchanges ("PBX") and single Customer PBXs operating within the Customer's premises or otherwise connected to airBand's Service.

Customer shall continually update this information and shall immediately notify airBand of any changes related to this information. In addition to providing the information requested above, Customer shall provide and continually update airBand with any changes that could cause adverse affect on call routing, or new number assignment other than what is managed by airBand.

Please indicate your understanding of this waiver and your acceptance and approval hereof by signing and returning a copy of this letter to airBand. airBand will not begin provisioning the Service until receipt of this signed waiver.

#### **UNDERSTOOD, ACCEPTED AND AGREED:**

DATE:	
COMPANY NAME:	
AUTHORIZED SIGNATURE:	
NAME AND TITLE: (Please Print)	 
COMPANY ADDRESS:	
CITY, STATE, ZIP:	



#### **RESPONSE REQUIRED - Important 911 Advisory**

DUE TO A RECENT GOVERNMENT RULING REGARDING E911 SERVICE, YOUR COMPANY'S PROMPT RESPONSE TO THIS NOTIFICATION IS REQUIRED. FAILURE TO RESPOND BEFORE WEDNESDAY, SEPTEMBER 28 COULD RESULT IN A DISRUPTION TO YOUR PHONE SERVICE.

#### Dear airBand Customer:

We want to make you aware of the recent federal mandates that govern Enhanced 911 (E911) services for Voice over Internet Protocol (VoIP) users in the United States. These mandates require providers, such as airBand, to notify all customers – and obtain documented confirmation of their understanding – of the capabilities and limitations of their E911 service.

The Federal Communications Commission (FCC) requires us to obtain an acknowledgement that you have received and understand the information provided below. Please read this advisory carefully and click on the link provided below to acknowledge receipt of this advisory.

This action is required by the FCC so airBand can continue to provide VoIP service to your business. We apologize for any inconvenience and solicit your help to ensure that your service continues uninterrupted.

#### **AIRBAND E911 SERVICE**

For your safety, we want to make sure that you understand the capabilities and limitations of the E911 service on the VoIP platform. Your airBand VoIP phone service includes E911 calling capabilities that are different from traditional 911 services. When you require help, placing an E911 call will result in your address and phone number being electronically delivered to your local 911 emergency personnel if your location is correctly entered into the location database. This location is recorded as the physical service address that appears on your initial contract.

You will be able to reach the emergency operator by dialing 9-1-1 when your new phone service is installed, but there may be a delay of up to 48 hours after installation before your information is entered into the database that delivers your address to the emergency operator. Also, please note that if you move your airBand IP phone to another location, such as from office to home, dialing 9-1-1 will connect to the emergency operator BUT the operator will see your location as the location at which the airBand IP phone was originally installed and entered into the location database instead of the location to which the phone was moved. Be advised, that in this instance you MUST INFORM THE EMERGENCY OPERATOR OF YOUR CURRENT PHYSICAL LOCATION.

In addition, E911 will not be available or function properly if (1) there is a power outage; (2) there is a problem with the network or equipment used to provide the service, including a problem with network facilities, equipment, power or another technical problem; or the equipment fails, is moved, or suffers interference. In addition, (3) relocating the equipment from the physical address where originally installed will result in emergency personnel responding to the address where service was initially installed. Emergency assistance also may be delayed or respond to the wrong address if you do not provide airBand with the correct service address in the service contract.

Please consider these limitations carefully and be prepared if E911 is not available in an

emergency on the airBand phone equipment. We urge you, your colleagues and family, as appropriate, to take time now to identify alternative means for contacting E911 in an emergency. This may include using a cell phone.

Please retain a copy of this communication for your records and acknowledge your receipt and understanding of this advisory by clicking on this link (<a href="http://www.airband.com/911">http://www.airband.com/911</a>) and providing the requested contact information. Also, please place the attached labels and notice on or near all airBand IP phones or equipment to alert guests and others who may not see this message. The labels can be printed on Avery #5661 labels that can be purchased at any office supply store.

Thank you very much for your cooperation. Please do not hesitate to call Customer Support at (866) THE-BAND (843-2263) if you have any questions.

Sincerely,

Tarnmy Miles
Executive Director, Provisioning and Customer Support

www.nirband.com = 1-865-nirband

# "" aır Band

The Company	airdand Technology   Products & Services   Testimonials   Contact Us
27	airBand E911 Advisory Response
	Please complete the following form. Full text of 911 Advisory
	Company Name:
Voice Services	Contact Name:
- <u>User Guides</u> - Internet <u>Services</u>	Title:
Data Services	Phone:
<ul> <li>Value Added Services</li> </ul>	Email:
	I am in receipt of the airBand advisory regarding the circumstances under which E911 services may not be available through the interconnected VoIP service I receive and the limitations of the E911 services that are available. I also am in receipt of the warning labels airBand provided for me to place on or near my VoIP equipment.
	Submit
	Policies Regarding Acceptable Use   Site Map   Support
	© 2005 airBand Communications, Inc.   webmaster@airband.com

# IMPORTANT E911 NOTICE

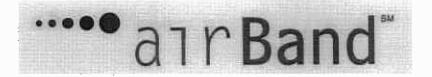
# E911 may not be available through airBand using IP phones:

- During a power outage
- During an Internet broadband network outage
- Due to other technical problems

# IN AN EMERGENCY, PLEASE DO THE FOLLOWING

- 1. Check For Dial Tone if there is a dial tone, dial 9-1-1.
- 2. If there is no dial tone or if emergency personnel do not answer when you dial 9-1-1, do not attempt to dial 9-1-1 from any phone connected to airBand's phone service. **USE AN ALTERNATIVE SERVICE**.

airBand phone service is not portable. E911 will not work properly or at all from an IP phone if you attempt to move it from the installed service address.



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